

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:14-cr-00261-RFB-GWF

Plaintiff,

ORDER

v.

SCOTT A. CARMITCHEL,

Defendant.

The Defendant, Scott A. Carmitchel ("Carmitchel") is charged in an Indictment (Dkt. #10) with armed bank robbery and interference with commerce by robbery. He made an initial appearance on a criminal complaint on August 1, 2014. Robert Knief appeared on behalf of the government and Elisa Vasquez of the Federal Public Defender's Office appeared on behalf of Carmitchel who was arrested as John Doe.

Carmitchel was initially arrested on state charges and brought over on a writ of habeas corpus ad prosequendum. Carmitchel was brought to the court heavily restrained with a spit mask around his neck because of disruptive and combative behavior state detention officials reported to the U.S. Marshal's Service. His transportation to federal custody was delayed because state detention officials reported he was being held in a protective custody cell because of bizarre and combative behavior which included spitting toward anyone attempting contact with him. State officials also reported that he stripped naked, refused to put on clothes for a state court appearance, and had to be brought to a state court hearing heavily restrained wearing a blanket and a spit mask.

During the initial appearance, the court attempted to communicate with Carmitchel to advise him of the charges and his rights. Carmitchel looked down during the entire proceeding and did not respond to any of the court's questions. Ms. Vasquez advised that she attempted to

1 communicate with her client prior to the proceedings, but Carmitchel was unresponsive. She  
2 was therefore unable to offer an opinion about whether he was competent to stand trial or to  
3 assist in his defense. The court indicated that given the reports received from state authorities  
4 and his behavior while in federal custody, the court intended to order a psychiatric evaluation to  
5 determine competency to stand trial as well as competency at the time of the commission of the  
6 offenses, and urged Carmitchel to speak to his counsel. Carmitchel shrugged his shoulders and  
7 laughed, but stopped laughing when the court made a record that he was laughing. The court  
8 again attempted to canvas Carmitchel in open court. However, he continued to be unresponsive.  
9 A financial affidavit could not be filed and the Federal Public Defender's Office was appointed  
10 to represent him.

11 The court conducted an identity hearing to establish the identity of the person arrested as  
12 John Doe appearing before the court. Ms. Vasquez stated she was not ready to proceed without  
13 her client's cooperation. Special Agent Henry Schlumpf was called and testified on direct and  
14 cross examination. The court found that the government had met its burden of proving that the  
15 person arrested as John Doe is Scott A. Carmitchel.

16 Based on the report received from state detention authorities and the U.S. Marshal's  
17 Service about Mitchel's behavior while in custody, and the court's observation of Carmitchel in  
18 open court, the court has reasonable cause to believe that the Defendant may presently be  
19 suffering from a mental disease or defect rendering him mentally incompetent to the extent that  
20 he is unable to understand the nature and consequences of the proceedings against him or to  
21 assist properly in his defense. The court will therefore sua sponte order a mental competency  
22 evaluation pursuant to 18 U.S.C. § 4241(a) and 4242.

23 **IT IS ORDERED** that:

24 1. In accordance with 18 U.S.C. §§ 4241, 4242, and 4247, the United States  
25 Marshal's Service shall forthwith transport Scott A. Carmitchel to a suitable Bureau of Prison  
26 ("BOP") facility that conducts psychological evaluations closest to the court, for psychiatric or  
27 psychological evaluation to determine:

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1           a.       whether Carmitchel is presently suffering from a mental disease or defect  
2 rendering him mentally incompetent to the extent that he is unable to understand the nature and  
3 consequences of the proceedings against him or to assist properly in his defense; and

4           b.       whether Carmitchel suffered from a mental disease or defect rendering  
5 him mentally incompetent at the time of the commission of the offenses charged.

6           2.       Carmitchel shall be held in a BOP facility for a reasonable period of time, not to  
7 exceed forty five days, unless extended by further order of the court upon a showing of good  
8 cause by the director of the facility that the additional time is necessary to observe and evaluate  
9 Carmitchel, or by appropriate motion, for a period of up to thirty additional days. 18 U.S.C. §  
10 4247(b).

11          3.       The examination conducted pursuant to this order shall be conducted by one or  
12 more licensed or certified psychiatrist or clinical psychologist. 18 U.S.C. § 4247(b).

13          4.       A psychiatric or psychological report shall be prepared by the examiner  
14 designated to conduct the psychiatric or psychological examination. The person designated to  
15 conduct the psychiatric or psychological examination, shall file the report with the court with  
16 copies provided to Robert Knief, Assistant United States Attorney, and to Rachel M. Korenblat,  
17 Assistant Federal Public Defender, counsel for Carmitchel.

18          5.       The report shall include:

19           a.       Defendant's history and present symptoms;

20           b.       a description of the psychiatric, psychological or medical tests that were  
21 employed and their results;

22           c.       the examiner's findings;


23           d.       the examiner's opinions concerning whether Carmitchel is suffering from  
24 a mental disease or defect rendering him mentally incompetent to the extent that he is unable to  
25 understand the nature and consequences of the proceedings against him, or to assist properly in  
26 his defense; and

27           e.       whether Carmitchel was insane at the time of the offenses charged, that is,  
28 that at the time of the commission of the acts constituting the offenses, whether Carmitchel, as a

1 result of a severe mental disease or defect, was unable to appreciate the nature and quality or the  
2 wrongfulness of his acts. 18 U.S.C. §§ 17(a) and 4247(c).

3 The court finds that the period of time required by the above-described psychiatric or  
4 psychological examination of Defendant, and the court's determination of Defendant's  
5 competency to stand trial and his sanity at the time of the offenses charged is excludable time  
6 under the United States Constitution, the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(A), and Rule  
7 5.1 of the Federal Rules of Criminal Procedure.

8 DATED this 8th day of August, 2014.

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11 PEGGY A. LEEN  
12 UNITED STATES MAGISTRATE JUDGE  
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